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Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant,
-----X

ECF CASE

08 Civ. 00223 (JSR)

**AFFIRMATION OF STEFAAN
DECONINCK IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

STEFAAN DECONINCK declares the following under the penalty of perjury
under the laws of the United States of America:

1. I am an employee of defendant MEDITERRANEAN SHIPPING COMPANY, S.A. ("MSC") and hold the position of Regional Claims Manager for North America. In this capacity, I have been involved in the handling of this claim and have personally reviewed all relevant documents relating to this matter, including the booking and shipment of this container. Accordingly, I have personal knowledge of the facts contained herein.

2. MSC is an ocean carrier and is the operator of the M/V MSC ROYAL ZANZIBAR, M/V MSC NAMIBIA, M/V MSC SILVANA, and M/V MSC ILONA.

3. In January of 2007, MSC contracted with Environmental Seed Producers ("ESP"), a producer and distributor of flower seeds, for the shipment of 648 bags of flower seeds from Tanga, Tanzania to Long Beach, California.

4. Pursuant to the shipment, MSC provided the Tanzanian shipper Maua Arusha, Ltd. ("Maua") with an empty twenty foot long dry container (no. MSCU1550902). As per the custom in the industry, Maua loaded the cargo in the container and then locked and sealed said container. MSC never received any complaints from Maua regarding the condition of the subject container.


5. The subject container was loaded aboard the M/V MSC ROYAL ZANZIBAR on January 26, 2007 and transported to the United States pursuant to MSC Bill of Lading number MSCUTA011430, attached to this Affirmation as Exhibit A. MSC's standard bill of lading includes Clause 17, which states that "If the shipper or his servant stuffs the container, the Merchant shall be responsible for the proper stowage and securing of the goods to insure ventilation and to avoid shifting."

6. The container traveled from Tanga to Long Beach on four different vessels: the M/V MSC ROYAL ZANZIBAR from Tanga, Tanzania to Dar es Salaam, Tanzania; the M/V MSC NAMIBIA from Dar es Salaam, Tanzania to Jeddah, Saudi Arabia; the M/V MSC SILVANA from Jeddah, Saudi Arabia to Ningbo, China; and the M/V MSC ILONA from Ningbo, China to Long Beach, California. The container was stowed both below deck and on deck over the course of the approximately seventy-five (75) days it was aboard these vessels.

7. The M/V MSC ILONA arrived at the terminal in Long Beach, California on or about April 10, 2007. The container was discharged from the vessel and subsequently delivered to ESP's facility in Lompoc, California, on or about April 10, 2007.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 7, 2008




Stefaan Deconinck

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EXHIBIT A

MSCU 151001

 MEDITERRANEAN SHIPPING COMPANY S.A., Geneva				ORIGINAL BILL OF LADING MSCU151011430	
IS IT PORT-TO-PORT SHIPMENT? (Fill in Boxes 7 & 8) Tick ->		COMBINED TRANSPORT SHIPMENT? (Fill in Boxes 5, 6, 9 & 10) Tick ->		N° of original Bol (number & words) 3/THREE	
(1) SHIPPER: (Full details) MAUA/ARUSHA LTD P.O. BOX 15002 TEL: (00 255) (0) 754 273 569 ARUSHA, TANZANIA		(2) CONSIGNEE: (Not Negotiable unless «To Order of...») ENVIRONMENTAL SEEDS PRODUCERS W. OLIVE AVE LOMPOC CA US 93436 C/O BODGER SEEDS LTD M TYLER 91733 3618 USA 151 93436 1800		N° of Bol Rider Pages (number & words) NIL	
(3) NOTIFY: (No responsibility shall attach to Carrier or to his Agent for failure to notify) EXPEDITION INTERNATIONAL KEN SAUE W. CENTURY BLVD 6TH FLOOR LOS ANGELES CA U.S.A 92001 90043		(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS (FCL/TCL, SLSC) FCL/TCL LINER IN FREE OUT Z 978 ELK 4/3		RECEIVED MAR 29 2007	
(5) PRE-CARRIED BY: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX		(6) PLACE OF RECEIPT: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX			
(7) PORT OF LOADING: TANGA		(8) PORT OF DISCHARGE: LONG BEACH			
(9) PLACE OF DELIVERY: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX		(10) MODE OF ON-CARRIAGE: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX			
(11) VESSEL & VOY N°: ROYAL ZANZIBAR 56R U. 0718		(12) AGENTS AT PORT OF DISCHARGE / DELIVERY: 			
(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s), if applicable)			(13) All details shown in Box 13 are furnished by the Shippers, being their Memoranda. Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shippers in Box 13 do not engage the Carrier contractually or in any other manner.		
Identity Marks of Cont. or other packages and seal number(s)	Corner, number of cont. or other packages	Total no. of ctns or other packages received by the carrier	Haz. Code	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Cargo Gross weight
MSCU151001/2015V/TARE Seal: 1760518/Cmure seal	2200 KG	1	1	1x20' CNTR(S) S.T.C. 648 BAGS OF FLOWER SEEDS 648 BAGS SHIPPED ON BOARD AS DECLARED BY SHIPPER CLEAN ON BOARD	15969,000 KG
TOTAL TARE: 2200.00 KG				TOTALS:	15969,000 KG
(15) FREIGHT & CHARGES («PAYABLE» signifies INTENTION. Cargo shall not be delivered unless Freight & Charges are paid)					
Specification of Freight & Charges		Basis	Rate	PAYABLE at	
				POL	ELSEWHERE
FREIGHT PAYABLE AT DESTINATION					
Ad Valorem charges					
Declared value:		TOTAL FREIGHT & CHARGES			
IN ACCEPTING this Bol, the Merchant expressly agrees to be bound by all the terms, conditions, limitations and exceptions, whether printed, stamped or written hereon and on Page 1, and in particular agrees that the Carrier shall have the right, at his sole discretion, to shift cargo in containers and to carry on deck containers of all types including tallies, tanks, bags, canvas top, pallets, vehicles and boats or similar articles used to consolidate goods.					
RECEIVED FOR SHIPMENT in apparent external good order and condition the containers, packages, units (over the marks and/or numbers shown in Box 14, said to contain the quantity of goods, weights and measurements stated by Shippers in Box 13, which particulars the Carrier has neither checked nor verified.					
IN WITNESS whereof, the no. of Original Bills of Lading shown at the top right corner of this contract have been signed. If this is a negotiable (To Order) Bol, the goods will only be delivered if the original Bol, properly endorsed by the Shipper and/or by the Bank concerned (and not by the Party), is surrendered. The others to be considered null and void.					
PLACE AND DATE OF ISSUE 26 JAN 2007		SHIPPED ON BOARD 26 JAN 2007		SIGNED ON BEHALF OF THE MASTER 